

REMARKS

I. General Remarks

The Claims have been corrected to amend from currently pending claims. No other amendments or changes to the claims have been made.

II. Question regarding Diligence

The Examiner has stated that the Applicant has failed to show diligence from September 1, 2000 through May 4, 2001, the filing date of the subject application. Applicant has filed with this Response a Supplemental Declaration which responds to all of the Examiner's issues relating to diligence. It is respectfully submitted that the Supplemental Declaration overcomes the questions regarding diligence.

Diligence: An Accounting of the Time Period From Just Before the Filing of Singer to the Constructive Filing of Applicant's Patent Application

The M.P.E.P. explains the relevant period of time for showing diligence as follows:

Under 37 C.F.R. § 1.131, the critical period in which diligence must be shown begins just prior to the effective date of the reference or activity and ends with the date of a reduction to practice, either actual or constructive (i.e., filing a United States patent application). Note, therefore, that only diligence before reduction to practice is a material consideration. The "lapse of time between the completion or reduction to practice of an invention and the filing of an application thereon" is not relevant to an affidavit or declaration under 37 CFR 1.131. *See Ex parte Merz*, 75 USPQ 296 (Bd. App. 1947).

M.P.E.P. § 715.07(a). Accordingly, the timeline in the § 1.131 Affidavit accounts for the time period just before the priority date of the prior art reference Singer (i.e. September 1, 2000) and the construction reduction to practice of Applicant's invention (i.e. May 4, 2001, the filing date of Applicant's patent application). *See* § 1.131 Affidavit, ¶¶ 10-12, accompanied by the evidence of Exhibits 15-28. The timeline with accompanying description shows diligence of the inventor towards a constructive reduction to practice by accounting in detail for the activity during this

relevant time period. *See id.* Those skilled in the art will appreciate that the method of the invention is carried out through execution of software. The evidence provided by the Applicant establishes continuous and ongoing efforts to “program” or write the necessary code and software modules to execute the steps of the invention. As such, the evidence establishes the requisite diligence under MPEP § 715.07(a).

III. Prior Art Rejections

Claims 1-10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. Publication 2003/0115198 issued to Singer *et al.* (hereinafter “Singer”). Claim 11 stand rejected under 35 U.S.C. § 103(a) as being obvious over Singer in view of U.S. Pat. No. 5,668,735 issued to Dominguez *et al.* (hereinafter “Dominguez”). Claims 12 and 24-32 stand rejected under 35 U.S.C. § 103(a) as being obvious over Singer in view of Dominguez and further in view of EPA Document AP-42 and engineering/industry calculations.

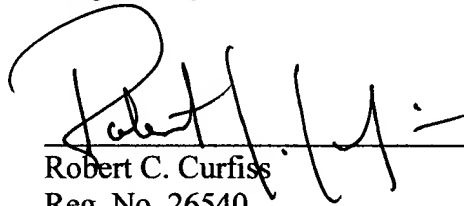
Applicant’s 37 C.F.R. § 1.131 affidavit previously filed and supplemental affidavit filed herewith establishe a date of invention before the priority date of Singer as explained above. Applicant traverses each of these rejections on the grounds that Singer should be removed as a basis for rejection based on the 37 C.F.R. § 131 Affidavit submitted herewith. Thus, Singer is no longer effective as prior art as to Applicant’s claims. Accordingly, Applicant respectfully requests removal of the 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) rejections as to Applicant’s claims.

SUMMARY

This 37 C.F.R. § 1.131 Affidavit is being filed in response to a non-final office action and is therefore considered timely filed in accordance with MPEP § 715.09.

If the Examiner has any other matters which pertain to this Application, the Examiner is encouraged to contact the undersigned to resolve these matters by Examiner's Amendment where possible. A prompt examination and allowance of the pending claims is earnestly solicited.

Respectfully submitted,

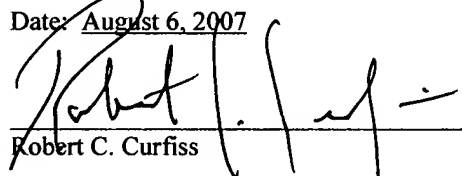


Robert C. Curfiss
Reg. No. 26540
19826 Sundance Drive
Humble, TX 77346-1402
Phone: (832) 573-1442
Fax: (832) 644-6152
Attorney for Applicant

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service, with sufficient postage as Express Mail Label No., EL978251377US, in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450.

Date: August 6, 2007



Robert C. Curfiss